Malayan Flour Mill Bhd v Raja Lope & Tan Co

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO D9–24–134 OF 2000
RAMLY ALI JC
13 JULY 2000

Civil Procedure *— Injunction — Injunction to restrain presentation of winding-up petition — Principles to be followed — Dispute as to status of creditor and debt due — Irrepairable damage which cannot be compensated in damages caused to plaintiff if presentation of petition is allowed — One partner in defendant was undischarged bankrupt — Where balance of convenience lies*

The plaintiff was applying for an injunction to restrain the defendant from presenting any petition to the court for the winding up of the plaintiff on the grounds that any presentation of or proceeding with a winding up petition against the plaintiff was unlawful and an abuse of the process of the court and also because there was a genuine dispute as to the sum claimed by the defendant in the statutory demand pursuant to s 218 of the Companies Act 1965.

Held, allowing the application:

(1) In the granting or refusal of an injunction, the courts are guided by the following well established principles: (i) a winding up petition should not be used as a mean to enforce payment of a debt which is bona fide disputed, otherwise it will be an abuse of the process of the court; (ii) whether there are bona fide serious issues to be tried or bona fide dispute as to the debt claimed; and (iii) where justice of the case lies including the balance of convenience, the harm on both parties if injunction is granted as against the harm if injunction is refused as well as the financial standing of both parties (see pp 596F, I, 598I).

(2) In order for a person to initiate winding up notice under s 218(2)(a), he must be a 'creditor' and the debt must be 'due'. In the present case, the plaintiff was not only disputing the status of the defendant as a 'creditor' in the context of s 218(2)(a) but also the debt upon which the defendant founded its petition, thus there were serious issues to be tried and bona fide dispute as to the debt in question (see p 597D–F).

(3) An arbitrator's award is not final and binding and can still be challenged by any parties, until it is registered and accepted as a judgment by leave of the High Court. In the present case, the defendant's action in issuing a notice under s 218 to the plaintiff without first registering the award was pre-mature (see p 598F–G).

(4) The balance of convenience clearly lied in favour of the plaintiff because the presentation of a winding up petition against the plaintiff which was a public listed company would make it

virtually impossible for the plaintiff to carry on its business activities. Moreover the plaintiff would suffer greater injustice if injunction is withheld since the presentation would cause irreparable damage to the plaintiff in terms of business and credit reputation which cannot be compensated in damages. And even if the plaintiff succeeds in its appeals, they would be rendered nugatory since it was unlikely that any money paid out to the defendant can be recovered because one the partner in the defendant company was an undischarged bankrupt. On the other hand, the plaintiff was able to make payment and would make payment if it was so decided on the disposal of the appeals (see p 599A–B, D–F).

[Bahasa Malaysia summary

Plaintif telah memohon untuk suatu injunksi untuk menghalang defendan daripada mengemukakan sebarang petisyen kepada mahkamah untuk penggulungan plaintif atas alasan bahawa sebarang pengemukaan atau prosiding dengan petisyen penggulungan terhadap plaintif adalah menyalahi undang-undang dan penyalahgunaan proses mahkamah dan juga kerana pertikaian yang sebenar berkenaan dengan jumlah yang dituntut oleh defendan di dalam tuntutan statutori menurut s 218 Akta Syarikat 1965.

Diputuskan, membenarkan permohonan tersebut:

(1) Di dalam membenarkan atau menafikan suatu injunksi, mahkamah diarah oleh prinsip-prinsip yang kukuh: (i) suatu perintah penggulungan tidak patut digunakan sebagai cara untuk menguatkuasakan pembayaran hutang yang dipertikaikan secara bona fide, jika tidak ia adalah penyalahgunaan proses mahkamah; (ii) sama ada terdapat isu-isu bona fide yang serius untuk dibicarakan atau dipertikaikan secara bona fide berkenaan dengan hutang yang dituntut; dan (iii) di mana keadilan kes tersebut berpihak termasuk imbangan kesenangan, keburukan kepada kedua-dua pihak jika injunksi dinafikan, begitu juga dengan keadaan kewangan kedua-dua pihak (lihat ms 596F, I, 598I).

(2) Bagi seseorang memulakan notis penggulungan di bawah s 218(2)(a), beliau mestilah seorang 'pemiutang' dan hutang tersebut mestilah 'kena dibayar'. Di dalam kes ini, plaintif bukan sahaja mempertikaikan status defendan sebagai 'pemiutang' di dalam konteks s 218(2)(a) tetapi juga hutang di mana defendan mendasarkan petisyennya, oleh itu terdapat isu-isu yang serius untuk dibicarakan dan pertikaian bona fide berkenaan dengan hutang yang dipersoalkan (lihat ms 597D–F).

(3) Award penimbangtara bukanlah muktamad dan mengikat dan masih boleh dicabar oleh sebarang pihakn sehingga ia didaftarkan dan diterima sebagai penghakiman melalui kebenaran Mahkamah

Tinggi. Di dalam kes ini, tindakan defendan di dalam mengeluarkan suatu notis di bawah s 218 kepada plaintif tanpa mendaftarkan dahulu award tersebut adalah pra-masa (lihat ms 598F–G).

(4) Imbangan kesenangan dengan jelas memihak kepada plaintif kerana pengemukaan petisyen penggulungan terhadap plaintif yang merupakan sebuah syarikat awam yang disenaraikan akan menjadikannya mustahil untuk plaintif menjalankan aktiviti-akitiviti perniagaan. Lebih-lebih lagi plaintif akan mengalami ketidakadilan yang serius jika injunksi tidak diberi kerana pengemukaan akan menyebabkan kerosakan yang tidak boleh dibaiki kepada plaintif dari segi perniagaan dan reputasi kredit yang tidak boleh dipampas dengan ganti rugi. Dan walau sekalipun plaintif berjaya di dalam rayuannya, ia akan dianggap tidak berguna kerana terdapat kemungkinan yang kecil bahawa sebarang wang dibayar kepada defendan boleh dikembalikan oleh kerana seorang rakan kongsi di dalam syarikat defendan adalah seorang muflis yang belum dilepaskan. Sebaliknya, plaintif dapat membuat pembayaran dan akan membuat pembayaran jika ia diputuskan sedemikian di atas penentuan rayuan-rayuan tersebut (lihat ms 599A–B, D–F).]

Notes

For cases on injunction to restrain presentation of winding-up petition, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2023–2025.

Cases referred to

Bloemen v Gold Coast City Council [1973] AC 115 (refd)

Bremer Oeltransport GmbH v Drewry [1933] 1 KB 753 (refd)

Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors [1988] 3 MLJ 90 (refd)

Ganda Holdings Bhd v Pamaron Holdings Sdn Bhd [1989] 2 MLJ 346 (refd)

Garden Cottage Foods Ltd v Milk Marketing Board [1984] AC 130; [1983] 2 All ER 770; [1983] 3 WLR 143 (refd)

Great Britain Mutual Life Assurance Society, Re (1880) 16 Ch D 246 (refd)

Keet Gerald Francis Noel John vs Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193 (refd)

Mann v Goldstein [1968] 1 WLR 1091 (refd)

Mohamed Abdullah Tpe Abdul Majeed v Habib Mohamed [1986] 1 MLJ 526 (refd)

New Travellers' Chambers Ltd v Cheese and Green 70 LT 271 (refd)

Sanpete Builders (S) Pte Ltd, Re [1989] 1 MLJ 393 (refd)

Legislation referred to

Arbitration Act 1950 s 26 [UK]
Arbitration Act 1952 s 27
Companies Act 1965 s 218, (2)(a)
Companies (Winding Up) Rules 1972

GH Khoo (*Skrine & Co*) for the plaintiff.
Krishna s/o V Dallumah (*Krishna Dallumah & Co*) for the defendant.

Ramly Ali JC: The plaintiff in this case, Malayan Flour Mill Bhd, in encl 8, applied, inter alia, the following interlocutory relief:

(i) that the defendant, may be restrained whether by themselves, or by their servants or agents or otherwise howsoever from presenting any petition to the court for the winding up of the plaintiff based on the sum of RM2,067,863.85 claimed in the statutory demand pursuant to s 218 of the Companies Act 1965 ('the Act') dated 25 May 2000 served on the plaintiff;

(ii) that the defendant may be restrained whether by themselves, or their servants or agents or otherwise howsoever from proceeding with any petition to the court for the winding up of the plaintiff based on the sum of RM2,067,863.85 claimed in the statutory demand pursuant to s 218 of the Act dated 25 May 2000 served on the plaintiff;

(iii) that the cost of the application be paid by the defendant; and

(iv) such further and other orders as the court deems just and proper.

Grounds of the application

The grounds of the application are:

(i) that any presentation of or proceeding with a winding up petition against the plaintiff is unlawful and an abuse of the process of the court; and

(ii) that there is a genuine dispute as to the sum of RM2,067,863.85 claimed by the defendant in the statutory demand pursuant to s 218 of the Act, dated 25 May 2000 served on the plaintiff.

Facts of the case

The plaintiff is a public listed company, listed on the main board of the Kuala Lumpur Stock Exchange ('KLSE'). By a written agreement dated 8 March 1989, the defendant firm agreed to construct and maintain the Civil and Building Works for Broiler Breeder Farm at Batu Kundur, Lumut, Perak for the plaintiff at the times and manner prescribed by the Agreement. After sometime, disputes and differences arose between the parties and pursuant to the contract, such disputes and differences were referred to an arbitration.

The arbitration was heard in two parts — the first on liability and the second on quantum. On 6 March 1997, the arbitrator gave an award in

respect of the first part of the arbitration ('the first interim award') in favour of the defendant holding that the plaintiff had breached the contract with the defendant by unlawfully terminating the contract. The plaintiff then applied to set aside the first interim award which was dismissed by the High Court in Originating Motion No R3–25–62–97 on 16 February 1998. The plaintiff then filed a notice of appeal vide Civil Appeal No W–04–14–1998 ('the first appeal'). As of to date, this first appeal is still pending.

The second part of the arbitration which dealt with the issue of quantum in the light of the first interim award was heard on 29 December 1998 and 7 January 1999. This resulted in the publication of the second interim award by the arbitrator in respect of quantum of damages on 26 April 1999 and the final award which incorporated interest and cost. However, this time, the defendant applied to the High Court to have the second interim award and the final award be remitted to the arbitration for reconsideration on question of interest rate and pre-award interest and this application was allowed by the High Court by an order dated 17 December 1999. The plaintiff then filed a notice of appeal vide Civil Appeal No W–02–51–2000 ('the second appeal'). As of to date, this second appeal is still pending in the Court of Appeal.

On 21 January 2000, the plaintiff filed an application for stay of execution of the order dated 17 December 1999 pending disposal of the second appeal. This application was adjourned to 19 June 2000 and then to 25 July 2000. In the meantime, the parties had been exchanging correspondence as to whether the arbitrator should defer the proceedings on the remission of the award to him. Notwithstanding the ongoing discussion, the arbitrator then reconsidered the award by way of an addendum dated 2 May 2000 and a correction dated 10 May 2000. In essence, the defendant is demanding payment of the total sum of RM2,067,863.85 allegedly due and outstanding in accordance with the decision of the arbitrator dated 10 May 2000. The defendant has by its solicitor's letter dated 25 May 2000 demanded payment of the said sum and given notice that if payment is not made within 21 days from the date of service thereof, the defendant may commence proceedings to wind up the plaintiff.

The plaintiff is compelled to make this application for an injunction to restrain the defendant from presenting and proceeding with any petition for the winding up of the plaintiff on the basis that the aforesaid amount demanded by the defendant is disputed by the plaintiff.

Applicable principles

In dealing with issues relating to interlocutory injunction, I am guided by a well established principle as laid down by Gopal Sri Ram JCA in delivering the judgment of the Court of Appeal in *Keet Gerald Francis Noel John vs Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 (at p 206). In that case, the learned JCA had said that, a judge hearing an application for an interlocutory injunction should:

(1) ask himself whether the totality of the facts presented before him disclosed a bona fide serious issue to be tried. He must refrain from making any determination on the merits of the claim or any defence to it and identify with precision the issue raised and decide whether they are serious enough to merit a trial. If he finds that no serious question is disclosed, the relief should be refused. If however, he finds that there are serious questions to be tried, he should move on to the next step of his enquiry;

(2) having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. He must take into account all relevant matters, including the practical realities of the case before him and weigh the harm the injunction would produce by it grant against thte harm that would result from its refusal. If after weighing all matters, he comes to the conclusion that the plaintiff would suffer greater injustice if relief is withheld, then he would be entitled to grant the injunction especially if he is satisfied that the plaintiff is in a financial position to meet his undertaking in damages. Similarly, if he concludes that the defendant would suffer the greater injustice by the grant of injunction, he would be entitled to refuse the relief;

(3) the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and to maintain the status quo. It is a judicial discretion capable of correction on appeal. A judge should briefly set out in his judgment the several factors that weighed in his mind when arriving at his conclusion.

Besides the above proposition, I am also being guided in this case that it is a well established principle that a winding up petition should not be used as a means to enforce payment of a debt which is bona fide disputed, ie the debt must be disputed on some substantial grounds (see *Re Great Britain Mutual Life Assurance Society* (1880) 16 Ch D 246 — followed in *Re Sanpete Builders (S) Pte Ltd* [1989] 1 MLJ 393) — where Jessel MR said:

> In my opinion, it is not sufficient for the respondent, upon a petition of this kind, to say 'we dispute the claim'. They must bring forward a prima facie case which satisfies the court that there is something which ought to be tried either before the court itself or in an action or by some other proceeding.

I have also noted another rule which was established in *Mann v Goldstein* [1968] 1 WLR 1091 — in which it was stated that 'it is an abuse of the process of the court to petition to wind up a company upon the basis of a debt which is so bona fide disputed'.

Based on the above principles, the first thing I have to consider is whether there is a bona fide dispute as to the debt claimed against the plaintiff or whether there are bona fide serious issues to be tried.

Serious issues to be tried and bona fide dispute as to the debt

Upon a proper perusal of the various affidavits filed herein and on the totality of the evidence presented before me, I am satisfied that the plaintiff had been disputing the claim or alleged debt, both on liability and quantum, right from the stage before their disputes were referred to the arbitrator, up to the stage when the respective awards were made by the arbitrator, until the matters were brought to the High Court. Both the awards made by the arbitrators, were brought to the High Court and later the plaintiff was serious enough in disputing the debt when it filed two separate appeals to the Court of Appeal on both issues. Both appeals are now pending. The plaintiff had also filed an application for a stay of execution of the order of the High Court dated 17 December 1999 pending disposal of the above appeals. This application is also still pending in the High Court.

Even after filing the appeals and application for stay of execution, the parties has been exchanging correspondence to the effect that the plaintiff was disputing the debt. There were not less than 16 letters from both sides as well the arbitrator on this matter. The plaintiff also disputed the status of the defendant as a 'creditor' in the context of s 218(2)(a) of the Act when the defendant issued the notice under s 218 to the plaintiff on 25 May 2000 (exh 'TWC-1' in the plaintiff's supporting affidavit). Section 218(2)(a) of the Act states that 'A company shall be deemed to be unable to pay its debt if — (a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding five hundred ringgit then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorized requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor'.

The section seems to me very clear. In order for a person to initiate winding up notice under the section, he must be a 'creditor' and the debt must be 'due'. Person not within the ambit of the said section cannot initiate any petition for winding up (see *Mann v Goldstein* [1968] 1 WLR 1091 and *Ganda Holdings Bhd v Pamaron Holdings Sdn Bhd* [1989] 2 MLJ 346). Therefore, so far as material to our case, if the defendant is not a 'creditor', it is not entitled to present or advertise its petition or apply for winding up order and it has no locus standi. Since the debt upon which the defendant founded its petition was substantially disputed by the plaintiff, the issues whether the defendant is a 'creditor' and whether the debt is 'due' need to tried and established first.

The defendant has raised a point that where parties have by agreement referred disputes to an arbitrator, the arbitrator's award is final and binding and this cannot be disputed by the plaintiff. In our present case, it is not disputed that the relevant awards made by the arbitrator had not been registered in the High Court under s 27 of the Arbitration Act 1952. At one stage of the proceeding, the counsel for the defendant had told the court that the defendant is in the process of taking steps to register the said award.

However, nothing had been done by the defendant to effect registration of the award until the hearing of this applications. A

Section 27 of our Arbitration Act 1952 is pari material to s 26 of the English Arbitration Act 1950. This section provides for the enforcement of the award which is similar to judgment of court provided leave is obtained from the High Court. If leave is granted to enforce the award 'all enforcement proceedings available in the High Court like writ of seizure and sale, garnishes proceeding including bankruptcy or winding up proceedings will be available to the award holder' (see *Janab's Key to Civil Procedure in Malaysia and Singapore* (2nd Ed) April 1995 at p 796). B

It has been said by Peh Swee Chin J in *Mohamed Abdullah Tpe Abdul Majeed v Habib Mohamed* [1986] 1 MLJ 526: C

> ... the validity of an award of an arbitrator can still be questioned at the stage of an application to enforce the award. The point of illegality affecting the validity of an award is a recognized ground for contesting the application for leave to enforce such an award. Even if it were not pleaded before the arbitrator or the High Court, it would be the duty of the court to take a point of illegality even if the parties before it may not take it when this point clearly arises on the evidence. D

An arbitrator's award, unlike an order or judgment of a court, does not immediately entitle the successful party to levy execution against the assets of the unsuccessful party. It is first necessary to convert the award into a judgment or order of the court. Only then the successful party can levy execution (see *The Law and Practice of Commercial Arbitration in England* (2nd Ed) by Sir Michael J Mustill and Steward C Boyd at p 416). E

Parties to an arbitration agreement impliedly promise to perform a valid award. If the award is not performed, the successful party can proceed by action in the ordinary court (High Court) to obtain judgment giving effect to the award (see *Bremer Oeltransport GmbH v Drewry* [1933] 1 KB 753 and *Bloemen v Gold Coast City Council* [1973] AC 115). F

On the strength of the above authorities, I am of the opinion that an Arbitrator's award is not final and binding and thus can still be challenged by any of the parties, until it is registered and accepted as a judgment by leave of the High Court. In this case, the defendant's action to issue notice under s 218 of the Act to the plaintiff without first registering the award under s 27 of the Arbitration Act 1952, is premature, in the context of the present proceeding. G

Having found that the debt in question in genuinely disputed and there are serious issues to be tried, it is now necessary for me to consider where the justice of the case lies. H

Justice of the case

In making this assessment, I must take into account all relevant matters including the balance of convenience: the practical realities of this case; the harm on both parties if injunction is granted as againsts the harm if injunction is refused as well as the financial standing of both parties. I

Balance of convenience/harm on parties

The plaintiff at all material times, is a public listed company whose shares are traded on the Main Board of the Kuala Lumpur Stock Exchange (KLSE). In the event a winding up petition is presented against the plaintiff, the statutory restrictions which would arise make it virtually impossible for the plaintiff to carry on it's own business activities. The presentation of a winding up petition and its advertisements as required by the Companies Winding up Rules 1972 would cause irreparable damage to the plaintiff given that the business and credit reputation of the plaintiff would be immeasurably harmed and injured by the presentation and advertisement of the petition which cannot be compensated in damages. Moreover, the presentation of the winding up petition may be construed as a breach on the part of the plaintiff under its other agreements with other parties. Further, in the event of the banks being advised of the winding up petition, the plaintiff's bank account may be frozen and this will have adverse effect on the plaintiff's business operation and financial position.

Furthermore, if the plaintiff succeeds in the appeals (which are still pending in the Court of Appeal), it is unlikely that any money paid out to the defendant can be recovered. This is particularly evident from the fact that both the partners in the defendant's firm had at one time adjudged bankrupts, albeit the bankruptcy of Mr Tan Wee Sang, one of the partners had been discharged. As both Mr Tan and Raja Haris Shah bin Dato Hanif Shah, being partners of the defendant's firm are jointly and severally entitled to the proceeds of the award, any payment made to the account to the share of the said Raja Haris Shah bin Dato Hanif Shah, who will remain an undischarged bankrupt will vest in the official assignee, for the official assignee to take necessary action to manage the estate of the said Raja Haris Shah bin Dato Hanif Shah. It is going to be quite unlikely for the plaintiff to recover any payment that may be made to the defendant. In the circumstances, I believe that the appeals, if successful, would be rendered nugatory.

The plaintiff had also shown that it is neither unwilling nor unable to make payment of the award sum, except for the fact that the plaintiff believed that there is a genuine dispute as to the sum payable. For that purpose, the plaintiff had sent a cheque No MBB 212539 for a sum of RM2,067,863.95 being the sum demanded by the defendant, to be kept in the custody of plaintiff's solicitors until the disposal of the appeals. This goes to show that the plaintiff is able to make payment and will make payment if it is so decided on the disposal of the appeals. The plaintiff also undertakes to abide by any order of damages that this court may assess the defendant to have suffered should it subsequently transpire that the orders sought herein were wrongfully granted. The plaintiff's last five years' annual report (exh 'TWC-15') clearly indicates that the plaintiff is solvent and able to meet any such claim by the defendant.

On the other hand, the defendant contended that the contract in question, which was signed on 8 March 1999, was wrongfully terminated by the plaintiff in August 1989 ie 11 years ago. The arbitration process

began in 1992 and after a long and protracted hearing before the arbitrator and after numerous applications to the High Court, the final award was rendered on 10 May 2000, almost nine years later. One of the partners, Mr Tan Wee Sang is now 74 years old. To him, if an arbitration award can only be final and binding upon affirmation by the highest court in the country, he is afraid that he may never live to see the fruits of the litigation. (Perhaps he would be able to see the fruits of the litigation faster if he had applied for leave of the High Court under s 27 of the Arbitration Act 1952 and subsequently enforce it as if he is enforcing a judgment of the High Court. Unfortunately he had not done that until now).

As to the partner's (Mr Tan Wee Sang) old age (74 years old), it may be true that he may not be able to see the fruit of the litigation as claimed by him, but on the other hand, the converse may also happen. If the plaintiff had paid the sum claimed to the defendant and part of the money goes to Mr Tan Wee Sang, the plaintiff may not be able to get back the sum paid from the defendant if it later succeed in its appeals. Besides the above, there's no other evidence adduced before me by the defendant for my consideration in its favour under this point.

Injunction as a discretionary remedy

I must also bear in mind that the remedy that I am asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the disposal of the appeals and intended to maintain the status quo, as expressed by Lord Diplock in *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130; [1983] 2 All ER 770; [1983] 3 WLR 143 and applied in *Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors* [1988] 3 MLJ 90; and *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors*[1995] 1 MLJ 193.

The evidence adduced before me clearly show that the debt in question is genuinely disputed by the plaintiff. The matters are now still pending on appeal at the Court of Appeal. The counsel for the plaintiff had informed the court that he had written to the President of the Court of Appeal for early date for their disposal. The delay in disposal of the appeals is not the fault of the plaintiff. Such being the case, a persuasive statement which I have seen in favour of the plaintiff is that of Kekewich J in *New Travellers' Chambers Ltd v Cheese and Green* 70 LT 271 at p 272 as cited in *Mann v Goldstein* [1968] 1 WLR 1091 at p 1098 — 'Of course the question whether this is a debt or not may possibly be tried; but it has been said over and over again, that the presentation of a winding up petition is not a convenient, and often not a proper method of trying a disputed debt. If there is any reasonable ground for disputing the existence of the debt — if the question is not a mere question of quantum, but whether there is in fact a debt or not — a petition ought not to be presented, and therefore the court ought to restrain the presentation of the petition'.

The balance of convenience which I have stated earlier and the justice of the case lies clearly in favour of the plaintiff. After weighing all the matters, I find that the plaintiff would suffer greater injustice if the relief is withheld.

Conclusion

Upon careful consideration of the above principle, evidence and submission by the counsels, I am of the view that this is a proper case for granting the injunction applied by the plaintiff. In the circumstances, the plaintiff's application in encl 8 herein is allowed with cost.

Application allowed.

Reported by Wong Siok Chin